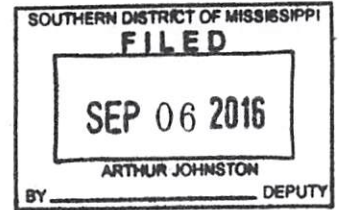


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
SOUTHERN DIVISION



D.A.Y. A MINOR, BY AND THROUGH HER
GUARDIAN, BARBARA A. LEDET

PLAINTIFF

VS.

CIVIL ACTION NO. 1:16cv325 HSO-JCG

JACKSON COUNTY, MISSISSIPPI
JACKSON COUNTY SCHOOL DISTRICT,
STEPHANIE GRUICH, PRINCIPAL,
TERRI NETTLES
UNKNOWN JOHN DOES 1-20

DEFENDANTS

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant Jackson County School District, ("JCSD") by and through undersigned counsel, hereby remove this action from the Circuit Court of Jackson County, Mississippi. Removal is based on federal question jurisdiction because a federal question appears on the face of the initial pleading filed by D.A.Y., a Minor, by and through her Guardian, Barbara A. Ledet.

I. Background

1. This case was originally filed on July 18, 2016 in the Circuit Court of Jackson County, Mississippi. In accordance with 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders received by JCSD are attached as Exhibit "A."

2. In the Complaint, Plaintiff alleges that "This is an action brought to redress

the deprivation – under color of policy, regulation, official decision, custom or usage – of rights secured to Plaintiff by 42 U.S.C. § 1983 arising under the Fourth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Mississippi.

3. Plaintiff alleges that, “[a]s a result of [D.A.Y.’s] disability, [she] was made eligible for special education services and supports pursuant to the Individual with Disabilities Act (“IDEA”), 20 U.S.C. §§ 1401 et seq.” Complaint, para. 15.

4. Plaintiff alleges that “D.A.Y. has a constitutional right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures and to be secure in her person and to maintain her bodily integrity against unreasonable assault of her person.” *Id.* at para. 23.

5. Plaintiff alleges that “D.A.Y. has a constitutionally protected liberty interest under the Fourteenth Amendment in personal security, bodily integrity and freedom from unjustified intrusions on personal security, including bodily restraint and punishment without due process of law.” *Id.* at para. 24.

6. Plaintiff claims that “... D.A.Y. was entitled to the protections of the ‘Public Services’ provisions of Title II of the Americans with Disabilities Act of 1990 (‘ADA’).” *Id.* at para. 33.

7. Plaintiff alleges that “[p]ursuant to 42 U.S.C. § 12132, Section 202 of Title

II, no qualified individual with a disability shall ... be subjected to discrimination by any such entity.” *Id.* at para. 34.

8. Plaintiff then alleges that “Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (‘Section 504’), and the regulations promulgated thereunder prohibit discrimination against persons with disabilities.” *Id.* at para. 39.

II. This Notice of Removal is Timely Filed

9. This lawsuit is a civil action within the means of the Acts of Congress relating to removal of causes.

10. Defendant JCSD, upon information and belief, received a copy of the initial pleading styled “COMPLAINT” on or about August 15, 2016.

11. Upon information and belief, no other defendants have been served a copy of the initial pleading and summons as of yet.

12. The removal of this action to this Court is timely under 28 U.S.C. §1446(b) because this Notice of Removal is filed within thirty (30) days after August 15, 2016, which is the date JCSD first received the summons and complaint in this action.

13. The United States District Court for the Southern District of Mississippi, Southern Division, is the proper place to file this Notice of Removal under 28

U.S.C. § 1441(a) because it is the federal district court that embraces the place where the original action was filed and is pending.

III. This Court Has Federal Question Jurisdiction

14. Plaintiff alleges claims under § 1983, 42 U.S.C. § 12132, 20 U.S.C. §§ 1401 et seq, and 29 U.S.C. § 794. Therefore, federal question jurisdiction exists over Plaintiff's claims under 28 U.S.C. § 1331 because the resolution of Plaintiff's claims will require adjudication of disputed questions of federal law.

15. To the extent the Complaint alleges statutory, state common law or other nonfederal claims, this Court has supplemental jurisdiction over any such claims under 28 U.S.C. § 1367 because those claims arise out of the same operative facts as Plaintiff's claims under the aforementioned federal statutes, and "form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

16. Because Plaintiff's federal claims arise under the laws of the United States, removal of this entire cause of action is therefore appropriate under 28 U.S.C. § 1441.

IV. Notice of Removal to the Circuit Court of Jackson County, Mississippi

17. Concurrently with this Notice of Removal, JCSD will file a copy of this

Notice with the Circuit Court of Jackson County Mississippi. A copy of the written notice of the Notice of Removal to Federal Court is attached hereto as Exhibit "B." In accordance with 28 U.S.C. § 1446(d), JCSD will give written notice to Plaintiff by contemporaneously serving this Notice of Removal on Plaintiff.

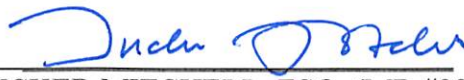
18.If any question arises as to the propriety of the removal of this action, JCSD respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

V. Conclusion

For the foregoing reasons, JCSD respectfully requests that this civil action be, and is hereby, removed to the United States District Court for the Southern District of Mississippi, Southern Division; that this Court assume jurisdiction of this civil action; and that this Court enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

Respectfully submitted, this the 2nd day of September, 2016.

Respectfully submitted:

By: 
J. TUCKER MITCHELL, ESQ. (MB #3372)
STEPHEN D. STAMBOULIEH, ESQ. (MB#102784)
*ATTORNEYS FOR DEFENDANT JACKSON COUNTY
SCHOOL DISTRICT*

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CERTIFICATE OF SERVICE

I, Tucker Mitchell, attorney for the Defendant Jackson County School District, do certify that I have this day filed the foregoing **NOTICE OF REMOVAL** with the United States District Court for the Southern District of Mississippi, Southern Division's by mailing same to the Clerk of the Court. I additionally certify that I have provided a copy of this pleading to the following:

**Circuit Court of Jackson County, Mississippi
P.O. Box 998
Pascagoula, MS 39568-0998**

**Michael W. Crosby
2111 25th Avenue
Gulfport, MS 39501**

This the 2nd day of September, 2016.


Tucker Mitchell